IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1981

No. 81-1891

MORRISON-KNUDSEN CONSTRUCTION COMPANY,
and
ARGONAUT INSURANCE COMPANY,

Petitioners,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR
and
SONIA HILYER, WIDOW OF JAMES H. HILYER,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The District Of Columbia Circuit

MOTION FOR LEAVE TO FILE
and
BRIEF OF AMICI CURIAE
ALLIANCE OF AMERICAN INSURERS
and
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

DENNIS LINDSAY*
ROBERT E. BABCOCK
LINDSAY, HART, NEIL & WEIGLER
111 S.W.Columbia, Suite 700
Portland, Oregon 97201
(503) 226-1191
COUNSEL FOR AMICI CURIAE

*Counsel of Record

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1981

No. 81-1891

MORRISON-KNUDSEN CONSTRUCTION COMPANY,
and
ARGONAUT INSURANCE COMPANY,

Petitioners,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR
and
SONIA HILYER, WIDOW OF JAMES H. HILYER,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The District Of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE ALLIANCE OF AMERICAN INSURERS and NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Pursuant to Rule 36, United States Supreme Court Rules, the Alliance of American Insurers and the National Association of Independent Insurers seek leave to file a brief supporting Petitioners and demonstrating that contributions to pension/health and welfare funds are not "wages" within the meaning of Section 2(13) of the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 902(13). Consent of counsel for Petitioners has been received. Consent of Respondent Hilyer has been refused. Movants' brief in support of the Petition was accepted by order of this Court dated October 4, 1982.

Movant Alliance of American Insurers is a trade association of 150 property and casualty insurance companies incorporated under the Illinois Not-For-

Profit Corporation Act. Movant National Association of Independent Insurers is a trade association of over 500 property and casualty insurance companies. Movants' members companies range from the very large to the relatively small and are engaged in the workers' compensation insurance business in all fifty states and the District of Columbia. According to most recent figures, movants' member companies underwrite approximately 45% of this nation's workers' compensation risks and provide about 36% of the compensation insurance required by employers subject to the District of Columbia Workmen's Compensation Act, 36 D.C. Code, §§ 501 et seq.

Movants offer a perspective on the issues not shared by any party. Movants' members participated in and supported the 1972 reforms to the LHWCA benefit structure.

Movants' brief demonstrates that the Court of Appeals' interpretation of Section 2(13) is unlike any definition used in that legislative process or at any time during the LHWCA's 55-year history.

Movants' members work with the LHWCA's provisions and administrators on a daily basis. Movants' brief demonstrates that that Court of Appeals' expansive definition of "wages" will provide most workers with a disability income exceeding the pay taken home from productive employment and will vastly increase the incidence of exaggeration and malingering. Movants' brief also demonstrates that retroactive application of the decision below will force the reopening of hundreds of thousands of cases "closed" by Deputy Commissioners since 1972 and cause the collapse of the LHWCA's administrative framework.

Movants' perspective and discussion of the impact of the decision on the costs and administration of thousands of claims will assist this Court in evaluating the merits of the decision below and assessing the need for reversal. This Motion for Leave to File the accompanying Brief should be granted.

DATED: November 17, 1982

DENNIS LINDSAY
ROBERT E. BABCOCK
LINDSAY, HART, NEIL & WEIGLER
Suite 700, Columbia Square
111 S.W. Columbia
Portland, Oregon 97201
(503) 226-1191

COUNSEL FOR MOVANTS

INDEX

	Page
SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. THE DECISION BELOW DISREGARDS THE INTENT AND HISTORY OF THE 1972 AMENDMENTS AND THE FACT THAT THE MASSIVE BENEFIT INCREASES MADE IN THAT YEAR WERE BASED UPON THE PREMISE THAT "WAGES" DO NOT INCLUDE CONTRIBUTIONS TO PENSION/ HEALTH AND WELFARE FUNDS	4
II. THE DECISION BELOW VIOLATES A FUNDAMENTAL TENET OF WORKERS' COMPENSATION STATUTES BY PERMITTING MOST WORKERS TO "NET" MORE OFF WORK THAN ON BY ELIMINATING ANY ECONOMIC INCENTIVE TO RESUME PRODUCTIVE EMPLOYMENT	12
III. THE DECISION BELOW MAY REQUIRE THE RECALCULATION OF BENEFITS PAYABLE IN HUNDREDS OF THOUSANDS OF CASES "CLOSED" SINCE 1972 AND CAUSE THE COLLAPSE OF THE LHWCA'S ADMINISTRATIVE SYSTEM .	20
CONCLUSION	25

INDEX OF AUTHORITIES

Page

Cases

Banks v. Chicago Grain Trimmers Assoc., Inc., 390 U.S. 459 (1968)..... 22

Intercounty Const. Co. v. Walter, 422 U.S. 1 (1975)..... 21

Los Angeles Dept. of W.&P. v. Manhart, 435 U.S. 702 (1978).... 22-23

Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 (1977)..... 7

O'Keefe v. Aerojet General Shipyards, Inc., 404 U.S. 254 (1971)..... 22

Teamsters v. Daniel, 439 U.S. 551 (1979)19-20..... 19-20

Statutes

33 U.S.C. § 902(10)..... 17
§ 902(13)..... ii,iv, 6,11,17
§ 922..... 21
40 U.S.C. 276a(b)..... 5

36 D.C. Code § 501..... iii

Other

Chamber of Commerce of the United States, Employee Benefits, 1980 (1981)..... 14

Hearings Before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 92nd Cong., 2d Sess., U.S. Government Printing Office (1972)..... 10-11

1 Larson, Workmen's Compensation Law, § 2.50 (1964)..... 16

Report of the Comptroller General of the United States, "Longshoremen's and Harbor Workers' Compensation Act Needs Amending", April 1, 1982..... 12, 13

S.Rep. No. 963, 88th Cong., 2d Sess. 1, reprinted in 1964 U.S. Code Cong. & Ad. News, 2339-2346..... 5

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1981

No. 81-1891

MORRISON-KNUDSEN CONSTRUCTION COMPANY,
and
ARGONAUT INSURANCE COMPANY,

Petitioners,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR
and
SONIA HILYER, WIDOW OF JAMES H. HILYER,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The District Of Columbia Circuit

BRIEF OF AMICI CURIAE ALLIANCE OF AMERICAN INSURERS and NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

SUMMARY OF ARGUMENT

The conclusion that Mr. Hilyer's "wages" should include the amounts which

Morrison-Knudsen contributed to the various union trust funds suffers from three basic flaws:

(1) The conclusion ignores persuasive evidence that Congress' reform of the Act's benefit structure in 1972--a reform which increased maximum weekly benefits from $70 to 200% of the national average weekly wage (now $524.70)--was premised on the understanding that "wages" should not include amounts paid by an employer to fund collectively bargained-for pension/health and welfare plans.

(2) The conclusion is bad public policy because it raises compensation benefits to a level exceeding "take home" pay and removes all economic incentive to resume work in most cases.

(3) If applied retroactively, the conclusion will force recalculation of benefits payable to hundreds of thousands of claimants and will cause the Act's administrative framework to collapse, thereby preventing achievement of the Act's primary purpose: The speedy delivery of fair compensation benefits for employment-related injury and disease.

Whether measured against the definition of "wages" used by all parties to the 1972 amendments, traditional concepts of workers' compensation, or the practical demands of effective administration, the decision is wrong. It should be reversed.

ARGUMENT

I.

THE DECISION BELOW DISREGARDS THE INTENT AND HISTORY OF THE 1972 AMENDMENTS AND THE FACT THAT THE MASSIVE BENEFIT INCREASES MADE IN THAT YEAR WERE BASED UPON THE PREMISE THAT "WAGES" DO NOT INCLUDE CONTRIBUTIONS TO PENSION/HEALTH AND WELFARE FUNDS

Hundreds of millions of dollars have been paid to hundreds of thousands of workers since the LHWCA's benefit structure was reformed in 1972. These monies were paid on the basic premise--shared by all throughout the LHWCA's history--that the "wages" on which the proper rate of compensation depends do not include employer contributions to pension/health and welfare funds.

Pension/health and welfare funds were basically unknown when the Act's definition of "wages" was adopted in 1927. However, the increasing frequency and

significance of a variety of "fringe benefit" programs caused the 88th Congress to broaden the Davis-Bacon Act's definition of "wages" to specifically include contributions made to fund a broad range of "fringe benefit" programs. 40 U.S.C. § 276a(b). See, S.Rep. No. 963, 88th Cong., 2d Sess. 1, reprinted in 1964 U.S. Code Cong. & Ad. News, 2339-2346.

The Davis-Bacon amendments were enacted because the Senate Committee on Labor and Public Welfare, the House Committee on Education and Labor, and Congress concluded that a broadened definition of "wages" was needed to restore a competitive balance threatened by an increasing incidence of "fringe benefit" programs. Eight years later, the same Senate and House Committees turned their attention to the Act and its long-needed

reform. Despite knowledge that employers' contributions to a broad variety of "fringe benefit" programs had become an important part of many workers' pay packages and a presumed awareness of the long administrative history of excluding those contributions from "wages," neither of the Committees nor any member of Congress proposed any change in Section 2(13) of the Act; the definition of "wages" adopted in 1927 remained unchanged.

Although there was no direct focus on the Act's definition of "wages" as such, the history of the 1972 amendments to the Act offers strong proof that the parties to that process were well aware of the distinction between included "wages" and excluded "fringes." Indeed, the record is clear that the parties based their debate and their ultimate agreement about appropriate benefit

levels on the definitional premise that "wages" do not include contributions to pension/health and welfare funds.

This Court has already identified the three groups whose interests Congress sought to accommodate in 1972.

> "The 1972 Amendments were the first significant effort to reform the 1927 Act and the judicial gloss that had been attached to it. The main concern of the Amendments was not with the scope of coverage but with accommodating the desires of three interested groups: (1) shipowners who were discontent with the decisions allowing many maritime workers to use the doctrine of 'seaworthiness' to recover full damages from shipowners regardless of fault; (2) employers of the longshoremen who, under another judicially created doctrine, could be required to indemnify shipowners and thereby lose the benefit of the intended exclusivity of the compensation remedy; and (3) workers who wanted to improve the benefit schedule deemed inadequate by all parties."
>
> (Northeast Marine Terminal Co. v. Caputo, 432 U.S. 249 at 261 (1977))

Vessel owners played little role in the process of revising the Act's benefit structure. That dispute was between workers and employers and was limited to finding a mutually acceptable ceiling to an increase for which all acknowledged substantial need.

The key "employer" and "worker" roles in the process of agreeing upon the reformed benefit structure were played by a representative of the shipbuilding industry--Mr. Ralph Hartman[1] --and the spokesman for the AFL-CIO--Mr. Howard McGuigan.

Mr. Hartman and Mr. McGuigan spoke a common language when they discussed reform

---

[1] Mr. Hartman later served as a member of the Benefits Review Board and wrote the opinion reversed by the decision below. Mr. Hartman served as Director, Office of Workers' Compensation Programs until very recently.

of the benefit structure. Both defined their terms in testimony closely predating the Amendments themselves. Both thought that benefits should be increased to a level more adequately reflecting "wage" loss. Both distinguished between "wages" and "fringe benefits" and--most importantly--both shared the premise that "wages" do not include the cost or value of employer contributions to pension/health and welfare funds.

Mr. McGuigan illustrated the inadequacies of the then-current $70 weekly maximum by comparison with prevailing "wage" levels in the longshoring and shipbuilding industries and within the District of Columbia. Those tables specifically excluded contributions to

pension/health and welfare plans from the "wage" base.[2]

Mr. Hartman's testimony that those same contributions were properly excluded from "wages" was equally explicit:

> ". . . Currently, the reported average weekly wage in the shipbuilding and ship repair industry approximates $165, which rate covers straight time, overtime, shift work differentials, vacation and holiday allowances.
>
> * * *
>
> "It must be recognized, of course, that there are additional weekly employer costs approximating $25 per week covering other contract-related benefits such as nonindustrial health and accident insurance, pensions, and statutory costs such as Social Security and state and federal unemployment

---

[2] Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, United States Senate, 92nd Cong., 2d Sess., U.S. Government Printing Office, 1972, pp. 99-110.

compensation. These costs continue during disability."

(Senate Hearings, pp. 182-183, Emphasis added)

The history is clear. Despite recognition by all that "fringe benefits" had become an important part of the overall compensation package offered many workers, employer contributions to pension/health and welfare funds were considered outside § 2(13)'s definition of "wages" at the time the Act's benefit structure was overhauled in 1972.[3] The Court of

---

[3] The premise that pension/health and welfare contributions are properly excluded from "wages" is shared by the insurance industry and reflected in its pricing practices. Premiums for workers' compensation and employers' liability insurance are based upon "payroll".

The National Council on Compensation Insurance--the primary workers' compensation rate-making authority--specifically excludes pension/health and welfare contributions from the proper "payroll" base.

Appeals overlooked this important legislative history and, as a result, adopted a definition which violates a basic premise of the 1972 amendments.

II.

THE DECISION BELOW VIOLATES A FUNDAMENTAL TENET OF WORKERS' COMPENSATION STATUTES BY PERMITTING MOST WORKERS TO "NET" MORE OFF WORK THAN ON AND BY ELIMINATING ANY ECONOMIC INCENTIVE TO RESUME PRODUCTIVE EMPLOYMENT

The Act's condition was assessed by the Comptroller General in a report issued April 1, 1982. The Report focused substantial attention on the Act's benefit structure and the problems that result when benefits available for disability begin to exceed "take home" pay.[4]

---

[4] "Take-home" pay equals gross pay minus federal and state income taxes, Social Security (FICA) taxes, and estimated deductions for union dues. Other job-related expenses such as transportation, child care, etc., are not deducted despite the fact that they end or decline during periods of unemployment.

> "These tax-free compensation benefits replace a higher percentage of net pay than they did in the past. In addition, some workers are eligible for other benefits which, when combined with compensation, could result in benefits that substantially exceed preinjury net pay. * * *
>
> "Evidence from private, long-term disability insurance programs indicates that high compensation rates cause disability incidence rates to increase. Private insurance plans with compensation rates over 70 percent of predisability gross income have incidence rates two-thirds above the average, while plans with compensation of 50 percent or less have incident rates one-third below the average. . . ."
>
> (Report of the Comptroller General of the United States, "Longshoremen's and Harbor Workers' Compensation Act Needs Amending", April 1, 1982)

Benefit levels which approach or equal full take-home pay replacement minimize return-to-work incentives and delay the return to productive employment.

Benefit levels which exceed take-home pay encourage exaggeration and malingering.

The Comptroller General demonstrated that most workers receive benefits averaging about 88 percent of pre-injury take-home pay when "wages" are defined to exclude contributions to "fringe benefit" programs. The decision below involved contributions equaling 68 cents per hour, about 15 percent of Mr. Hilyer's apparent hourly wage. The cost of the parallel items required by the contracts governing longshore labor now exceeds $4 per hour, about one-third of the "straight-time" hourly wage. The national average "voluntary fringe benefit" funding package now equals about 28 percent of cash payroll.[5] Addition of a 15-30 percent

---

[5] Chamber of Commerce of the United States, Employee Benefits, 1980, p. 8 (1981).

increment to "wages" will cause compensation rates to increase from the current 88 percent of "take-home" to a level substantially exceeding predisability spendable earnings.

The impact on compensation rates of including contributions equaling 15 percent and 30 percent of "gross pay" is shown in the following table:

Average Wage (Selected Intervals)	PERCENT OF TAKE-HOME PAY REPLACED BY COMPENSATION		
	COLUMN A (Current Practice)	COLUMN B (15% Contribution)	COLUMN C (30% Contribution)
$ 1 - 50	109%	129%	146%
51 - 100	110%	127%	143%
101 - 150	98%	131%	148%
151 - 200	81%	100%	113%
201 - 250	83%	95%	108%
251 - 300	85%	98%	111%
301 - 350	87%	100%	113%
351 - 400	89%	102%	116%
401 - 450	91%	105%	118%
451 - 500	93%	107%	121%
501 - 550	96%	110%	125%
551 - 600	98%	113%	127%
601 - 650	100%	115%	130%
651 - 700	101%	117%	133%
701 - 750	104%	120%	135%
751 - 800	106%	122%	138%

Inclusion of contributions to pension/ health and welfare funds in the Act's definiton of "wages" vastly increases the number of workers who receive more for not working than for labor performed. For all but a relatively few workers, all economic incentive to resume employment as soon as medical condition permits is erased. There can be no justification for such a result.

> "Even among those who contend that the scale of benefits is generally too low, there are few if any who would contend that anything resembling tort principles of amount of recovery should be imported into compensation law. It was never intended that compensation payments should equal actual loss, for the reason, if no other, that such a scale would encourage malingering."
>
> (1 Larson, Workmen's Compensation Law, §2.50, pp. 11-12 (1964))

There is similarly little justification for another result of the decision

below. Although inclusion of pension/ health and welfare contributions in Mr. Hilyer's "wages" would increase his widow's benefits, the same reasoning that led to the decision below would lower the rates payable in many cases of total disability.

If contributions to pension/health and welfare funds are "wages" within the meaning of 33 U.S.C. § 902(13), then the receipts from those same funds must also be "wages" within the meaning of 33 U.S.C. § 902(10):

> "(10) 'Disability' means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."
>
> (Emphasis added)

Continued receipt of "wages" in the form of pension/health and welfare plan payments must logically either preclude

an award of total disability--an award which presumes the total absence of wages, or, at the very least, assure that the employer or its insurer receives a credit for the amounts received from the fund.

Those representatives of labor who lobbied for the 1972 amendments would be astonished to learn that they had helped create a benefit structure which offset pension benefits gained through collective bargaining against a compensation entitlement created by statute.

The Court of Appeals issued an opinion which rewards malingering and erases collectively bargained-for benefits because it failed to see what this Court has already recognized: contributions made to fund pension/health and welfare programs--whether measured by hours worked, units built, or tonnage handled--

qualitatively differ from items historically considered to be "wages" under the Act.

"Wages" are paid on behalf of particular workers. Pension/health and welfare contributions seldom reflect an obligation to any particular employee. Instead, unlike historic "wages," most contributions are made to satisfy an overall obligation to all workers, past, current and future. As perceived by this Court in another context,

> ". . . it is inaccurate to describe [pension fund contributions] as having been 'on behalf' of any employee. The trust agreement used employee man-weeks as a convenient way to measure an employer's overall obligation to the Fund, not as a means of measuring the employer's obligation to any particular employee. Indeed, there was no fixed relationship between contributions to the Fund and an employee's potential benefits. A pension plan with 'defined benefits', such as the Local's, does not tie a

> qualifying employee's benefits to the time he has worked . . . . One who has engaged in covered employment for 20 years will receive the same benefits as a person who has worked for 40, even though the latter has worked twice as long and induced a substantially larger employer contribution."
>
> (Teamsters v. Daniel, 439 U.S. 551, 560-61 (1979))

The Court of Appeals overlooked this critical qualitative difference when it equated contributions and wages.

III.

THE DECISION BELOW MAY REQUIRE THE RECALCULATION OF BENEFITS PAYABLE IN HUNDREDS OF THOUSANDS OF CASES "CLOSED" SINCE 1972 AND CAUSE THE COLLAPSE OF THE LHWCA'S ADMINISTRATIVE SYSTEM

The amount of "wages" is central to every LHWCA proceeding. Administrative determinations of accurate "wages" and the calculation of the appropriate benefit rate are conducted in accordance with the Department's Longshore Procedure Manual. The Manual specifically directs the

exclusion of pension/health and welfare contributions.

About 96 percent of all longshore claims are "resolved" by Deputy Commissioners and their claims examiners. Since 1972, the Deputy Commissioners have had no authority to make final determinations of disputed issues. Claims resolved by Deputy Commissioners remain forever open. The amounts of "wages" upon which initial compensation rates are based remain forever subject to redetermination. Intercounty Const. Co. v. Walter, 422 U.S. 1 (1975).

Even those claims in which purportedly final orders have been entered remain subject to the Act's "modification" provisions and eligible for reopening at any time within one year following the date of the last compensation payment in order to permit correction of any "mistake

in a determination of fact". 33 U.S.C. § 922.

Modification remedies have been broadly defined by this Court. O'Keefe v. Aerojet General Shipyards, Inc., 404 U.S. 254 (1971); Banks v. Chicago Grain Trimmers Assoc., Inc., 390 U.S. 459 (1968). The Deputy Commissioner's determination of a compensation rate pursuant to an erroneously restrictive definition of "wages" would certainly qualify as a "mistake".

Unless reversed or ruled to be prospective only, the decision below will require the reopening and recalculation of the benefits payable in hundreds of thousands of post-1972 "time loss" cases.

This Court has recently recognized the enormous impact that changes in previously settled rules can have in the insurance industry.

> "Nor can we ignore the potential impact which changes in rules affecting insurance and pension plans may have on the economy. . . . These plans, like other forms of insurance, depend on the accumulation of large sums to cover contingencies. The amounts set aside are determined by a painstaking assessment of the insurer's likely liability. Risks that the insurer foresees will be included in the calculation of liability, and the rates or contributions charged will reflect that calculation. The occurrence of major unforeseen contingencies, however, jeopardizes the insurer's solvency and, ultimately, the insureds' benefits. Drastic changes in the legal rules governing pension and insurance funds, like other unforeseen events, can have this effect. Consequently, the rules that apply to these funds should not be applied retroactively unless the legislature has plainly commanded that result. . . ."
>
> (Los Angeles Dept. of W.& P. v. Manhart, 435 U.S. 702, 721-22 (1978), footnotes omitted).

The decision below will have extraordinary impact, increasing the amounts

payable for compensation and death benefits under the Act by 25 to 30 percent (over $90 million annually) and creating an additional, unanticipated and unrecoverable cost of nearly $450 million if found retroactively applicable to 1972.[6]

The Department of Labor could not perform the tasks necessary to implement retroactive application of the decision below. The number of "lost-time" injuries has nearly quadrupled since 1972. The Department's claims processing staff has grown by only 47 percent--to a total of 147 persons. This staff barely manages its current case load.

The decision below will divert administrative efforts necessary to the

---

[6] These figures were drawn from studies performed by the National Council on Compensation Insurance. See, footnote 3, supra.

functioning of a system intended to speed delivery of fair benefits for job-related injury and disease. The required revival of hundreds of thousands of claims will jeopardize the entire structure.

CONCLUSION

The LHWCA must function or fail in a world of reality. Risks must be assessed and shared in advance of their materialization. Goods and services must be priced before the actual final cost can be known.

The evaluation of LHWCA risks and the pricing of the items which must absorb its costs have for more than half a century reflected the consensus that employer contributions to pension/health and welfare funds are outside the "wages" upon which the amount of compensation entitlement is based.

The inclusion of these contributions in the LHWCA's "wage" base will severely wrench an already unsteady compensation structure and create an absurdity--a system in which most workers "net" more off work than on.

The decision below equates amounts paid to specific employees for particular work efforts with amounts contributed in accordance with one of a range of permissible methods of funding a broad variety of "fringe benefits" to past, present, and future members of an employer's work force. The equation should not be drawn.

"Wages" and "contributions" are fundamentally different. The decision should be reversed.

RESPECTFULLY SUBMITTED,

/s/ DENNIS LINDSAY
/s/ ROBERT E. BABCOCK
Suite 700, Columbia Square
111 S.W. Columbia
Portland, Oregon 97201
(503) 226-1191

ATTORNEYS FOR AMICI CURIAE

CERTIFICATE OF SERVICE

This is to certify that on the 17th day of November, 1982, three copies of this Brief were mailed, with first-class postage prepaid, to the following:

E. BARRETT PRETTYMAN, JR.
HOGAN & HARTSON
815 Connecticut Avenue N.W.
Washington, D.C. 20006

ARTHUR LARSON
Duke University School of Law
Durham, N.C. 27706

RICHARD W. GALIHER, JR.
GALIHER, CLARKE, MARTELL & DONNELLY
1215 - 19th Street N.W.
Washington, D.C. 20036

COUNSEL FOR PETITIONERS

George S. Leonard
6207 Tally Ho Lane
Alexandria, VA 22307

COUNSEL FOR RESPONDENT HILYER

THE HON. REX K. LEE
SOLICITOR GENERAL, JUSTICE DEPARTMENT
Constitution Avenue, Between 9th & 10th
Washington, D.C. 20530

DONALD S. SHIRE
ASSOCIATE SOLICITOR, EMPLOYEE BENEFITS
U.S. DEPARTMENT OF LABOR
Suite N-2620, NDOL
Washington, D.C. 20210

COUNSEL FOR DIRECTOR, OWCP, RESPONDENT

DENNIS LINDSAY
COUNSEL FOR AMICI CURIAE